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November 1, 1995

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William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554


Dear Mr. Caton:

Re: CC Docket No. 95-155, Toll Free Service Access Codes

On behalf of Pacific Bell and Nevada Bell, please find enclosed an original and six copies of their "Comments" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,


Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Toll Free Service Access Codes

CC Docket No. 95-155

COMMENTS OF PACIFIC BELL AND NEVADA BELL

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EXHIBIT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Toll Free Service Access Codes

CC Docket No. 95-155

COMMENTS OF PACIFIC BELL AND NEVADA BELL

A. INTRODUCTION AND SUMMARY

Pacific Bell and Nevada Bell ("Pacific") hereby respond to the Commission's Notice of Proposed Rulemaking released October 5, 1995, which seeks comments on the toll free 800 access code and the transition to new toll free access codes.

As a preliminary matter, we question the need for many of the procedures the Commission suggests in view of the market demand for 800 service. Our data indicate that minutes of use for 800 service have not increased at nearly the rate of the increase in assignment of 800 numbers. These data suggest that while more 800 numbers are being assigned to customers than ever before, customers are not using the numbers for 800 calling at rates reflecting the explosion in demand for 800 numbers. Therefore, the imposition of expensive and burdensome procedures for preserving and protecting toll free numbers may not be justified in light of the true demand for toll free calling. We believe the Commission should

consider this fact in deciding whether to implement many of the suggestions contained in the Notice of Proposed Rulemaking ("NPRM").

We also caution the Commission not to act until the Commission completes its ongoing audit of the reasons for the drastic depletion of 800 numbers earlier this year. Until the reasons are known, it is difficult to set policy or to know whether the suggestions the Commission makes are justified.

B. DISCUSSION OF COMMISSION PROPOSALS

1. Efficient Assignment of Toll Free Numbers

The Commission seeks comment on when a RespOrg¹ may assign a toll free number to a subscriber.² The Industry Guidelines for 800 Number Administration ("Industry Guidelines" or "Guidelines")³ specify that RespOrgs must have an affirmative request from an 800 subscriber before assigning a toll free number to that subscriber. Pacific supports this provision. However, the Guidelines are currently voluntary; we believe making them mandatory would help ensure the equitable distribution of toll free numbers and prevent the allocation of numbers to subscribers who have no intent to use them.

We do not believe it necessary to require RespOrgs or 800 service providers to create new records reflecting subscribers' affirmative requests for 800 numbers because we consider a customer order for 800 service to be a bona fide request. However, we would

¹ A Responsible Organization ("RespOrg") is the entity a subscriber chooses to manage his or her 800 service computer record.

² In the Matter of Toll Free Service Access Codes, Notice of Proposed Rulemaking, CC Docket No. 95-155 (rel. Oct. 5, 1995) ("NPRM"), ¶ 13.

³ We attach a copy of the Industry Guidelines to these Comments as Exhibit A.

support the Commission reserving the right to conduct an audit of a particular entity if concerns about violation of the Guidelines were to arise.

2. Escrow Requirement

The Commission seeks comment on whether RespOrgs or subscribers should pay to reserve toll free numbers, and if they should, the mechanics of creating such an escrow requirement.⁴ We believe that enforcement of the Industry Guidelines permitting the assignment of toll free numbers only to bona fide subscribers⁵ should vastly reduce the quantity of numbers in “reserve” status and make it unnecessary to create a deposit requirement to deter number hoarding.

We believe the bureaucracy needed to administer an escrow account would add unnecessary cost to the toll free number assignment process with no equivalent benefit. Additionally, the financial burden of contributing to an escrow account would drive many small RespOrgs and toll free number providers out of the market. Under such conditions, only very large RespOrgs would be able to market toll free numbers effectively. And if small RespOrgs or toll free service providers attempted to pass the escrow charges along to toll free number subscribers, their market would become even narrower. Thus, escrow costs, whether assumed by the RespOrg, service provider, or subscriber, would only serve to chill the market for toll free service.

In discussing how to discourage warehousing or hoarding of toll free numbers, the Commission refers to Section 2.2.1 of the Industry Guidelines, which states that 800

⁴ NPRM, ¶¶ 14-16.

⁵ Industry Guidelines (Exh. A hereto), § 2.2.5.

numbers may not be treated as commodities.⁶ Pacific believes that codification of the Industry Guidelines will be the best antidote to warehousing and the alternative which presents the least administrative burden to all concerned.

3. Lag Time

The Commission expresses concern about the lag time between “any given status” and “working” status, and suggests shortening the lag time to prevent number shortages.⁷ However, we do not believe the toll free number shortage over the last year was caused by lengthy lag times. To the contrary, we believe problems arose because numbers were moved directly from “reserved” to “working” status without ever going through the “assigned” stage. This fact indicates that numbers may have been warehoused inappropriately.

The Industry Guidelines require a bona fide subscriber for each number in “reserved” status; we believe the Commission should make the Guidelines mandatory. The concern should not be the lag time between any given status and “working” status but the enforcement of the requirements for “reserved,” “assigned” and “working” status and the extent to which RespOrgs abide by the requirement that toll free numbers be assigned only to customers who have requested them affirmatively.

4. The Aging Process For Toll Free Numbers

The Commission asks for comment on whether shortening the “aging” process for toll free numbers -- the period of time between disconnection or cancellation of a toll free number and the point at which that toll free number may be reassigned to another subscriber --

⁶ *Id.*, ¶ 16 n.41.

⁷ *Id.*, ¶¶ 17-18.

will remedy the problem of toll free number scarcity.⁸ Pacific recommends a six month “aging” period if there is no referral number on the old number, and an increase to a twelve-month aging period if there is a referral number. Pacific offers its end users a year-long referral on regular number changes and our end user customers have come to rely on this arrangement. Shortening the period could alienate our end users without any real improvement in the availability of numbers.

We believe numbers are in short supply not because of long aging intervals, but because large numbers of numbers are characterized as “working” when customers are not actually using them for toll free calling. Shortening the aging period may encourage rather than discourage warehousing. Numbers with an aging period that is too short may be unattractive to end users because of the risk of misdialled calls. To avoid alienating end users with such numbers, RespOrgs may resort to warehousing to ensure a supply of properly aged numbers. If the aging period is sufficiently long in the first instance, the Commission will discourage this inappropriate behavior.

5. Personal Identification Numbers

Pacific does not recommend that the Commission seek to encourage or facilitate the use of Personal Identification Number (“PIN”) technology in certain market segments.⁹ It seems discriminatory to define a subcategory of “low use” numbers and then confine those toll free number subscribers to a service degraded by lack of portability¹⁰ and the need to dial

⁸ *Id.*, ¶ 19.

⁹ *Id.*, ¶¶ 20-21.

¹⁰ Toll free numbers using PIN numbers are not portable because one number is used by many subscribers. Allowing one subscriber to take the number to a new carrier would require all

additional digits. The use of PIN technology should be voluntary for toll free service providers and subscribers to toll free number services. Any attempt to reward providers for using PIN technology would likely make true portability and ease of dialing unavailable to many end users.

6. Reservation of New Toll Free Codes

The Commission seeks comment on the impact of mechanized generic interface ("MGI") technology on the toll free number reservation and assignment process.¹¹ While MGI may be problematic in some contexts, the idea of setting up dispute resolution procedures or lotteries is fraught with administrative burden and other problems. One can only imagine the litigation and FCC complaints that would result from a process that allows parties to vie for numbers. Historically, carriers have relied upon a principle of "first come, first served" when it comes to number assignment, and we see no reason why this principle should be cast aside here.

7. Phased Introduction of New Toll Free Service Access Codes

The Commission asks whether the new 888 access code should be introduced gradually to avoid overloading the systems which assign the numbers.¹² We understand that in order to prevent the immediate depletion of new toll free numbers and the overload of the SMS system, the SMS/800 Number Administration Committee ("SNAC") is developing a plan for phased introduction of new toll free access codes. Pacific is hopeful that the SNAC plan will

subscribers to move with that subscriber. The practical effect is that a subscriber wishing to change carriers must obtain a new toll free number.

¹¹ *Id.*, ¶ 23.

¹² *Id.*, ¶¶ 24-25.

avert any problems caused by the introduction of the 888 access code; we urge the Commission to allow the industry to administer the transition to the new code.

8. Implementation Plan for Next Toll Free Code Beyond 888

The Commission next seeks comment on the appropriate means to implement toll free access codes after the industry implements the 888 code.¹³ Pacific agrees that there should be a “trigger” which alerts the industry to the imminent depletion of a toll free code. However, we would also remind the Commission and the industry that the continued deployment of toll free access codes depends on market demand and usage on the public switched telephone network (“PSTN”). As we mention in our introductory comments, we do not believe the Commission should mandate deployment of toll free access codes if usage does not justify incurring the costs of deployment. Providing everyone in the world with a toll free number, whether they use it or not, should not be the Commission’s goal. The opening of each successive toll free access code should be dependent upon proven market demand, including proven growth in usage on the PSTN.

The optimal time to commence implementation of the next toll free code could vary significantly depending upon the technology in use at the time, as well as other factors. For instance, if the trigger that signals exhaust is 50% depletion, at that point the industry or the North American Numbering Council would have to determine how long a new deployment would take.

The Commission suggests that “all network switches in the United States should have, at a minimum, the software needed to support all toll free codes reserved by the industry

¹³ *Id.*, ¶¶ 27-28.

in January 1995 installed by February 1997.”¹⁴ Preliminarily, we are uncertain of which codes constitute "all toll free codes reserved by the industry in January 1995."

Moreover, Pacific did not understand the vendors' representations to the Commission to mean that their products would support both 888 and the remaining toll free codes with little or no modification. As we understand the state of the vendors' development efforts, hardware and software modifications will be required to implement each new access code. In particular, the SCP (which stores the toll free codes) requires the capacity to store approximately eight million records per code. The hardware for this capacity, along with the corresponding software for all network nodes, requires negotiation with the vendors for development, delivery and deployment.

Before completing all hardware and software upgrades necessary to implement new toll free codes, Pacific would want to know that market demand existed. It would be premature at this point to make a business decision to purchase necessary hardware and software without knowing the demand projections. Also, as technology advances, there will be new network architecture/signaling options to provide toll free service. It may be imprudent to deploy all toll free codes with the current technology, especially without any market demand.

9. Tracking Toll Free Number Usage

The Commission seeks comment on the type of reports it should receive in order to track toll free number usage and guard against exhaust.¹⁵ We understand the 800 database administrator, Database Service Management, Inc. ("DSMI") is in the best position to comment

¹⁴ Id., ¶ 29.

¹⁵ Id., ¶ 31.

on its system's capacity to issue reports, and we defer to DSMI's comments in this regard. We caution the Commission, however, not to increase RespOrgs' reporting burden without having the results of its audit of the reasons the 800 code was depleted.

10. Warehousing of Toll Free Numbers

Pacific agrees that warehousing of toll free numbers accelerates the depletion of numbers¹⁶ and is inconsistent with accepted industry practice and the voluntary Industry Guidelines. The Commission should formalize the existing Guidelines to ensure that RespOrgs do not engage in impermissible warehousing. We reserve judgment on the penalties the Commission proposes until the Commission's audit regarding the rapid depletion of 800 numbers is completed and the causes of the depletion are known.¹⁷ We believe the Commission should reserve judgment as to what remedies it should impose until it determines whether RespOrgs acted intentionally to cause the shortage of numbers. If they did not, the penalties the Commission proposes may not be appropriate.

With regard to the Commission's suggestion that RespOrgs regularly certify that they are not warehousing numbers,¹⁸ making the Industry Guidelines mandatory would obviate the need for such reporting. Pacific recommends instead that all RespOrgs be prepared, in case of complaint, to submit to an audit of their number reservation procedures. In response to the Commission's query, Pacific considers the subscriber information the Commission proposes be included in the certification to be proprietary.¹⁹

¹⁶ See id., ¶ 32.

¹⁷ Id. (proposing fines, decertification of the entity as a RespOrg).

¹⁸ Id., ¶ 34.

¹⁹ Id.

11. Vanity Numbers

The Commission asks for comments on a variety of proposals regarding vanity numbers -- telephone numbers for which the letters associated with the numbers as digits on a telephone handset spell a name or word of value to the number holder.²⁰ It asks whether customers currently using vanity numbers with the 800 access code should have a right of first refusal or other priority on the equivalent number drawn from a new toll free code.²¹

We cannot emphasize strongly enough our opposition to giving holders of vanity numbers the right of first refusal or the right to duplicate their existing number under the new access code. There are several reasons for our strong resistance to this proposal. First, we believe the volume of numbers that might be tied up in such a process could be extremely high, raising the specter of rapid exhaustion of the 888 code and a return to the situation we faced earlier this year. Second, granting such a right sets a bad precedent in an era of rapid deployment of new area codes and increasing demands to duplicate numbers whenever we deploy a new code. Third, the 800 database cannot discern which numbers are vanity numbers subject to protection. Fourth, using industry codes places us in the middle of conflicts between end users in competition with one another.

a. The Quantity of Potential Vanity Numbers Dictates Rejection Of A Right Of First Refusal

We believe there are too many possible vanity numbers to permit customers a right of first refusal. First of all, there is an obvious problem of definition. For some, such a number consists only of the last four digits of the telephone number -- for example,

²⁰ *Id.*, ¶¶ 35 *et seq.*

²¹ *Id.*, ¶ 35.

"1-800-NXX-LOAN." If the definition of vanity number extends to such numbers, the volume of vanity numbers could be quite high. As the Commission recognizes,²² "if the percentage of 800 vanity numbers is large, we must ... assess whether the benefits of establishing ... a rule [regarding a right of first refusal] outweigh the costs it would impose, the most obvious of which is the rapid immediate consumption of numbers from new codes with little assurance that these numbers will be intensively used." A glance at our Yellow Pages tells us that the use of vanity codes, especially for the last four digits of a telephone number, is widespread in California. Therefore, the burdens associated with allowing a right of first refusal for vanity numbers far outweigh the benefits that may accrue to customers.

Moreover, vanity numbers consisting of the last four digits of a telephone number may well spell a word in common use that many customers wish to obtain. Terms such as "BOND" (for bail bond companies) or "LOAN" are good examples. We anticipate a great deal of competition for such numbers; giving customers a right of first refusal, allowing competitive bidding or establishing in any way a "right" to use the number other than on a first come, first served basis could be administratively burdensome in the extreme. As the Commission recognizes, customers have no proprietary interest in vanity numbers.²³ A bright line rule -- such as a first come, first served process -- avoids confusion, litigation and other administrative burdens in determining which customer may use a number.

²² *Id.*, ¶ 40.

²³ *Id.*, ¶ 38.

b. Allowing A Right Of First Refusal Sets A Bad Precedent

If vanity numbers in the context of toll free access codes diverge from the general first come, first served rule, we set a bad precedent in other numbering contexts. For example, in California the depletion of NXX numbers has required that we deploy new area codes at a rapid rate. If customers in the toll free arena are allowed to use a vanity number with a new access code, customers switched to a new geographic area code may claim a similar right.

The industry is struggling with issues of code exhaust, not only with regard to toll free codes, but in exhaust of codes in geographic Numbering Plan Areas as well. In the not too distant future, the industry must contemplate the need to expand the basic 10 digit structure of the North American Numbering Plan. Any scheme that sets a precedent for less than optimum use of numbering resources only hastens the exhaustion of numbers before the network is ready to accommodate new numbering options. We urge the Commission not to begin the ride down this slippery slope at this time.

c. The 800 Database Cannot Discern Vanity Numbers

We believe that the existing 800 database has no means of determining which numbers a customer considers to be vanity numbers. Absent specific contact from a customer asserting a right to a vanity number -- a process that would favor certain customers over others without any legitimate basis -- we have no way of determining which customers would be the beneficiaries of a right of first refusal.

d. We Oppose The Use Of SIC Codes

The Commission also asks whether customers could be identified by industry through the use of standard industrial allocation codes ("SIC Codes") to prohibit competitors in

the same industry from appropriating the same number and harming the party who first had the number.²⁴ We are strongly opposed to such a proposal. It puts RespOrgs in the position of prohibiting one customer from using a number used by another customer in the same industry, and ultimately hurts our business relationship with our customers. In industries which make common use of vanity numbers, such as the bail bond or loan industries in the examples described above, such a practice unfairly benefits one competitor without any discernible advantage to customers as a whole.

e. The Best Alternative To A Right Of First Refusal Is A First Come, First Served Policy

The Commission asks for alternatives to a right of first refusal.²⁵ The Commission proposes a gateway intercept during the transaction to a new toll free code, so that when a consumer calls either "1-800-THE-CARD" or "1-888-THE-CARD," s/he will first reach an intercept message that will help clarify which entity s/he wants to reach before the call is completed. We believe such interception would annoy consumers, hurt our relationship with the business entities using both toll free numbers, and jeopardize our relationship with IECs. We have learned in other contexts that IECs do not want us to interfere with their telephone traffic by interrupting calls once they are placed.

Moreover, Pacific Bell does not currently possess the technology to pass a call through a gateway on to the 800 customer. Once such a call terminates in a gateway, we are currently incapable of redirecting the call. Thus, a gateway is not a feasible solution from our perspective.

²⁴ *Id.*, ¶ 45.

²⁵ *Id.*, ¶ 46.

We also do not believe that partitioning of toll free service -- "leaving business entities and the majority of vanity number holders to use the 800 code and assigning a specific toll free code to subscribers for personal and pager use" -- is a workable solution.²⁶ Partitioning would almost certainly result in underutilization of the new 888 code and complaints about discriminatory treatment from customers changed to the 888 access code.

f. There Is No Legal Or Policy Basis For Instituting A Right Of First Refusal

Finally, the Commission asks whether it has authority to promulgate measures implementing a right of first refusal.²⁷ Because no court has held that a customer has a proprietary right in a particular telephone number,²⁸ the Commission's authority to promulgate such measures is questionable at best. As a matter of policy, any step by the Commission toward creating property rights in numbers limits the "finite and very valuable public resource" that toll free numbers represent.²⁹ Therefore, both legally and as a matter of policy, the Commission should refrain from charting new territory in this area.

12. High Volume Numbers

The Commission asks for comment on how to protect a customer assigned an 888 number similar to an 800 number with high volume.³⁰ Currently, the SMS/800 records do not contain information indicating call volume; such information is proprietary to the RespOrgs

²⁶ *Id.*

²⁷ *Id.*, ¶ 41.

²⁸ *Id.*, ¶ 38.

²⁹ *Id.*, ¶ 1.

³⁰ *Id.*, ¶ 47.

and of great competitive value. To require the RespOrgs to populate the SMS/800 records with information identifying 800 numbers which exceed a certain threshold of traffic would require a number-by-number modification of the SMS/800 database. Moreover, because call volume information is highly sensitive in nature and of great competitive value, an unscrupulous RespOrg could use the information to identify target markets. Therefore, the pitfalls and burdens of so updating the records may well outweigh the benefits of doing so.

Moreover, it is difficult to define which 800 numbers are high volume numbers. Some numbers have high volume usage only during certain seasons, or fluctuate from day to day. If a defined threshold of traffic were set, numbers with this type of fluctuation might not be captured, depending upon when the traffic was examined.

We propose an approach with regard to such high volume numbers that leaves to individual RespOrgs the decision as to how to protect customers from the annoyance of misdialed numbers. Because there is no way to identify high volume numbers without using proprietary information, and because measurements may be inaccurate due to seasonal or daily call volume fluctuations, the best approach is to allow RespOrgs and 800 service providers to deal with their customers on a case by case basis as they do today. Only in this way can customers receive a response tailored to their individual needs.

13. Toll Free Directory Assistance

The Commission asks for comment on whether toll free directory assistance for 800 and 888 service should be open to competition.³¹ We endorse such a proposal. We also support the Commission's suggestion to combine the 800 and 888 databases so that a customer

³¹ *Id.*, ¶ 48.

who dials either “1-800-555-1212” or “1-888-555-1212” will have access to all toll free numbers; the proposal is both efficient and consumer-friendly. Finally, we agree that the “888-555-1212” number should not be assigned until toll free directory assistance issues have been resolved.

14. Administration of the Service Management System

The Commission asks for comment on the appropriate party to administer the toll free database.³² We do not believe this docket is the appropriate place to make this determination. The Commission in its Report and Order in Docket 92-237 ordered a transition of North American Numbering Plan Administration ("NANPA") responsibility from Bellcore to a neutral third party, and also ordered the transition of central office code administration to the same neutral administrator. We believe a decision on the appropriate administrator for 800/888 numbers is premature now, and should be taken up after the NANPA and central office code administration transition.

15. Public Awareness and Industry Participation

The Commission seeks comment regarding the extent and type of public information necessary to allow a smooth transition to 888 service.³³ Given that toll free service is competitive, we anticipate that RespOrgs will have an incentive to advertise the new 888 code. We believe such advertising, in addition to the efforts the Commission details -- the use of public relations firms, monthly advisories to RespOrg sales staff, press interviews and press releases -- are adequate to advise customers of the transition to the 888 code.

³² Id., ¶ 49.

³³ Id., ¶ 50.

16. Circuit Breaker Model

The Commission asks whether use of circuit breakers similar to those used to halt stock market trading might control depletion of toll free access codes.³⁴ We assume that some of the Commission's suggestions arise from the situation that arose earlier this year when it became apparent that the 800 access code would exhaust prior to implementation of a new 888 code. We understand that the Commission has sponsored an audit to determine the causes of such depletion of 800 numbers.

Until the Commission has the audit results, it is difficult to prescribe remedies. If, for example, a few large organizations were hoarding numbers and this caused the problem, a remedy which focuses only on those RespOrgs which inappropriately take a large volume of numbers would be the most appropriate. If, on the other hand, the depletion of the 800 code was caused by a large number of RespOrgs, then a circuit breaker system that stops all RespOrgs from taking more than a certain volume of numbers would be appropriate.

We believe the former approach, if any circuit breaker is to be used at all, is probably the preferable one. That is, if a RespOrg's volume of new toll free access codes increases significantly over its prior usage, a circuit breaker which would limit that RespOrg's eligibility for additional numbers to a certain threshold would take effect. There should be room for good cause exceptions for such RespOrgs. If, for example, the RespOrg can show that the sudden increase in its demand for toll free access codes is attributable to legitimate customer demand, the circuit breaker should not go into affect.

³⁴ Id., ¶¶ 51 et seq.

The Commission's suggestion that all RespOrgs' number allocation be held at a certain threshold once a certain trigger date is reached (e.g., four months before exhaust of the previous access code),³⁵ would penalize all RespOrgs, even if they are not responsible for the rapid depletion of the access code. We are opposed to any model that penalizes all RespOrgs without evidence that all are responsible for the problem.

17. Tariffs

We agree with the Commission's suggestion that the existing Part 69 provisions for 800 service should also cover 888 service (as well as service for subsequent toll free access codes).³⁶ We understand the Commission's discussion of interim rates applies only to RespOrgs which cannot initially deliver 888 traffic through end office switches, but must use access tandems in the interim period; we are not in this category. Finally, we agree that 888 tariff provisions may be filed on not less than 45 days' notice.

C. CONCLUSION

We understand the Commission's concern with the preservation of numbering resources and the depletion of toll free numbers. However, until we know the reasons for the rapid exhaustion of the 800 access code, we believe it would be premature to impose burdensome new requirements on an entire industry. We believe codification of what have

³⁵ Id., ¶ 53.

³⁶ Id., ¶ 56.

heretofore been voluntary Industry Guidelines will prevent number warehousing and shortages without creating unnecessary new burdens.

Respectfully submitted,

PACIFIC BELL AND NEVADA BELL



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Date: November 1, 1995
0122496.01

EXHIBIT A

Issue 3.0, December 1, 1993

Industry Guidelines
for
800 Number Administration

Industry Guidelines for 800 Number Administration

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